



**BOARD OF ADJUSTMENT MEETING
MONDAY, July 26, 2021
City Council Chambers, 400 East Military Avenue, Fremont NE
BOARD OF ADJUSTMENT MEETING – 5:00 P.M.
AGENDA**

1. Call to Order.
2. Roll Call
3. Election of a Chair and Vice-Chair
4. Consider a request for Variance to reduce the setback for a detached garage from 20' to 10' on property located at 904 N. Locust St., Fremont, Nebraska.
5. Adjournment.

THIS MEETING WAS PRECEDED BY PUBLICIZED NOTICE IN THE FREMONT TRIBUNE, THE AGENDA DISPLAYED IN THE LOBBY OF THE MUNICIPAL BUILDING AND POSTED ONLINE AT WWW.FREMONTNE.GOV IN ACCORDANCE WITH THE NEBRASKA OPEN MEETINGS ACT, A COPY OF WHICH IS POSTED CONTINUALLY IN THE COUNCIL CHAMBERS FOR PUBLIC INSPECTION, AND SAID MEETING IS OPEN TO THE PUBLIC. A COPY OF THE AGENDA WAS ALSO KEPT CONTINUALLY CURRENT AND AVAILABLE TO THE PUBLIC IN THE PRINCIPLE OFFICE OF THE DEPARTMENT OF PLANNING, 400 EAST MILITARY AVENUE. THE BOARD OF ADJUSTMENT RESERVES THE RIGHT TO ADJUST THE ORDER OF ITEMS ON THIS AGENDA.

Staff Report

TO: Board of Adjustment

FROM: Jennifer L. Dam, Director of Planning

DATE: July 26, 2021

SUBJECT: Request for variance of Section 11-614.01.E.2.a to reduce a 20 foot setback to a 10 foot setback

Background:

John and Julie Klein have requested a variance of the required street yard setback from twenty feet to ten feet as required by Section 11-614.01.E.2.a of the Fremont Municipal Code on property legally described as Lot 7, Block 5, Parkview Second Addition, Fremont, Nebraska and located at 904 N. Locust St.

The applicant wants to construct a detached garage on the property that aligns with the south side of the house along the south street yard. The code states that "Any detached garage that fronts on a public or private street must be set back the greater of twenty feet or the minimum setback required by the applicable district."

The property is zoned SR, Suburban Residential. The street yard setback for a Standard I lot is ten feet. The existing house meets the ten-foot setback.

The rationale for a twenty-foot setback requirement is to ensure that a car parked in the driveway would not extend into the right-of-way.

The distance from the existing house and the proposed garage to the property line is ten feet. The distance to the street curb is twenty feet.

The house to the east has a setback from the garage to the property line of about six feet. The distance to the street is about eighteen feet.

The property to the west has a setback from the garage to the property line of about five and a half feet. The distance to the street is about seventeen feet.

The Public Works director did not object to a reduction to a ten-foot setback and processed a variance to the City Council. The City Council approved a resolution to reduce the setback. Unfortunately, the City Council does not have the authority to do so.

The City Attorney recommended applying to the Board of Adjustment for a variance.

The UDC lists the following "*Criteria for Issuance*. The board may grant a variance from the strict application of this UDC if the variance is not prohibited by Subsection C., above, and the board makes findings based upon the evidence presented to it in each specific case that all of the following are demonstrated:"

1. Strict application of the zoning regulations will produce undue hardship;

2. Such hardship is not shared generally by other properties in the same zoning district and within the same vicinity;
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance;
4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice;
5. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to the zoning regulations; and
6. The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of this UDC or other ordinances/resolutions.

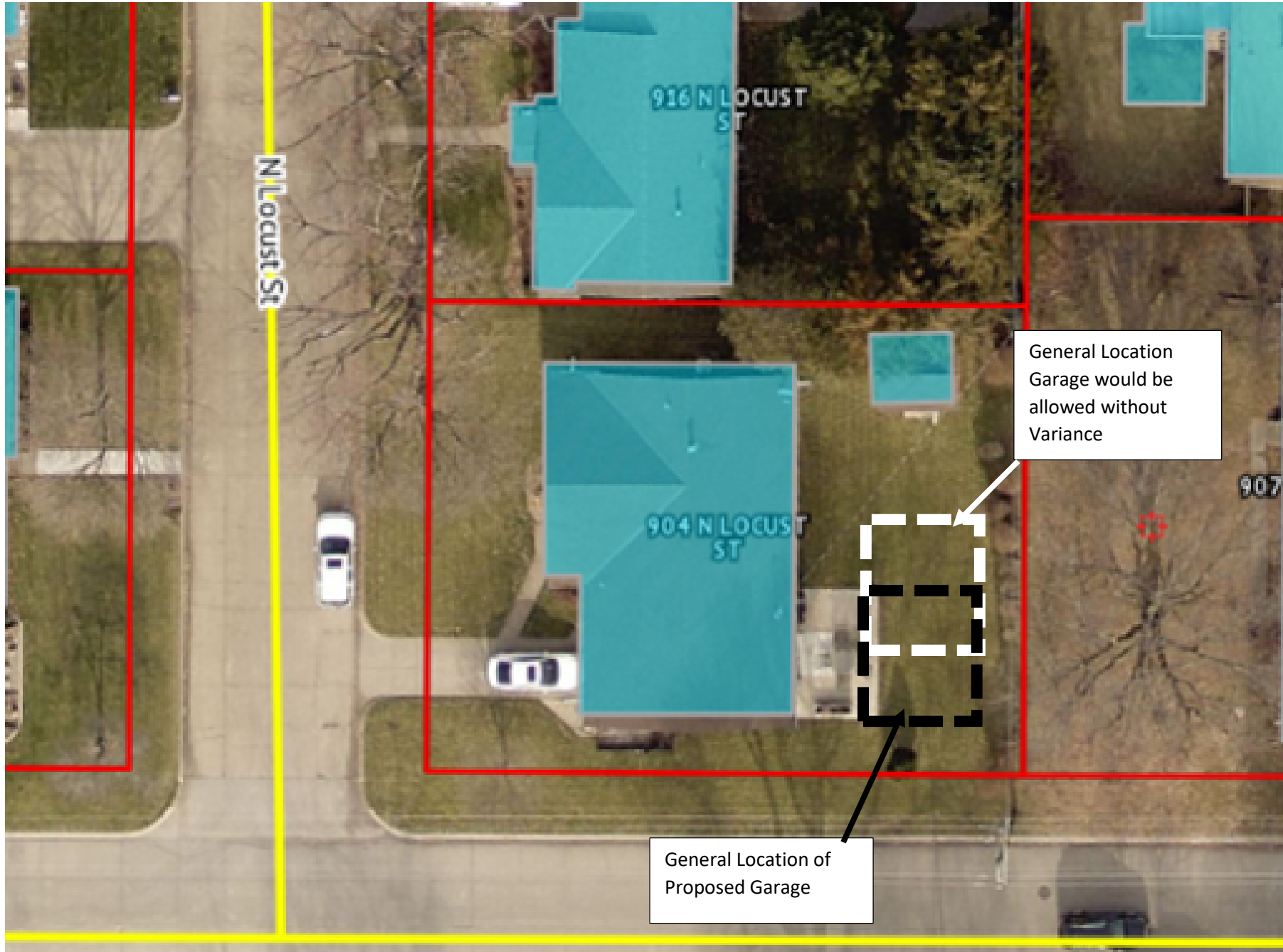
Findings:

1. The proposed garage would be located approximately ten feet from the east side of the house. Locating the garage with a twenty-foot setback would inhibit light and air to the interior of the house. A ten-foot setback would allow more light and air to enter the windows at the rear of the house. Lack of adequate light and ventilation creates a hardship.
2. There are other houses along 9th Street that are constructed with an attached garage that is less than twenty feet to the property line. These dwellings meet the definition of a non-standard use and could be granted relief via a conditional use permit. The subject house is not non-standard, so it does not qualify for such relief.
3. A variance would not be a detrimental impact to the abutting property.
4. The variance would allow continued light and ventilation into the rear of the house. Zoning regulations were initially developed in the United States to ensure that properties had adequate light and ventilation.
5. The situation is not recurring in nature and the few other dwellings with a similar condition could apply for relief through other measures.
6. The granting of the variance would not cause substantial detriment to the public good or impair the intent and purpose of the UDC.

The Public Works director does not object to a reduced setback and driveway length.

Vicinity Map





General Location
Garage would be
allowed without
Variance

General Location of
Proposed Garage



General location garage
could be located without
a variance

General location of
proposed garage